



TMA Privacy and Civil Liberties Office Information Paper



14 USES AND DISCLOSURES WHEN AN AUTHORIZATION IS NOT REQUIRED

HIPAA Privacy ♦ March 2010

PURPOSE

The purpose of this paper is to provide guidance on the 14 Uses and Disclosures of Protected Health Information (PHI) where an authorization is not required and to ensure that the Military Health Systems (MHS) apply appropriate safeguards, as set by the DoD Health Information Privacy Regulation, DoD 6025.18-R, and the Health Insurance Portability and Accountability Act (HIPAA) of 1996, to prevent any disclosure of PHI that would be in violation of HIPAA. DoD 6025.18-R., C6.1, C7.1-12 and the HIPAA Privacy Rule (45 CFR 164.502), establish the requirement for uses and disclosures of PHI.

DEFINITIONS

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.

Safeguards: A covered entity shall have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information.

Use: The sharing, employment, application, utilization, examination, or analysis of PHI within an entity that maintains such information.

GUIDANCE

The DoD Health Information Privacy Regulation permits certain uses and disclosures of PHI without the requirement for agreement or objection of the individual. Disclosures of PHI related to these 14 subject areas require accounting of the disclosure. Individuals have a right to request an accounting of disclosures for a period of six years beginning on the date of the disclosure or April 14, 2003, whichever is later. The Protected Health Information Management Tool (PHIMT) is the data repository of choice for MHS originated disclosures. The 14 uses and disclosures are:

1. **As Required By Law:** A Covered Entity (CE) may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. A CE shall meet the requirements described in sections C7.3, disclosures about victims of abuse, neglect, or domestic violence; C7.5, disclosures for judicial and administrative proceedings; or C7.6, disclosures for law enforcement purposes; for uses or disclosures required by law

- Disclosure of PHI about an individual believed to be the victim of abuse, neglect, or domestic violence to a government authority does not apply to the reporting of child abuse or neglect.
 - Disclosures for judicial and administrative proceedings may include a response to a court order or administrative tribunal, provided that the CE discloses only the PHI authorized by the order; a subpoena, discovery request, or other lawful process, in the absence of a court order.
 - Examples of law enforcement purposes for disclosure of PHI: reporting certain types of injuries or wounds; court ordered warrant, subpoena, or summons, Grand Jury subpoena; administrative requests; locating a suspect, fugitive, material witness, or missing person; victims of crimes; decedents; criminal conduct CE premises; medical emergencies.
2. **For Public Health Activities:** A CE may disclose PHI for the following public health activities as stated in section C7.2, the prevention/control of diseases, injuries, or disabilities; child abuse/neglect; communicable diseases; Food and Drug Administration (FDA) - regulated products/ activities; and work related illnesses or injuries.
 3. **For Medical Facility Patient Directory:** The CE may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure in a medical facility directory. If an individual objects, that objection shall be documented by the covered entity and shall remain valid for the duration of that episode of care.
 4. **Of Inmates In Correctional Institutions Or In Custody:** A CE may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual if the requirements of section C7.6.1 – C7.6.6 are met:
 - if the correctional institution or such law enforcement official represents that such PHI is necessary for the healthcare of such individuals;
 - for the health and safety of such individual, other inmates, officers or employees of others at the correctional institution, other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
 - law enforcement on the premises of the correctional institution; and
 - the administration and maintenance of the safety, security, and good order of the correctional institution. A CE may use PHI of individuals who are inmates for any purpose that PHI may be disclosed.
 5. **For Health Oversight Activities:** A CE may disclose PHI to a health oversight agency for oversight activities authorized by law. These activities may include audits; civil, administrative, or criminal proceedings or investigations; inspections; licensure or disciplinary actions or other activities necessary for the oversight of:
 - the healthcare system;

- government benefit programs for which health information is relevant to beneficiary eligibility;
 - entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
 - entities subject to civil rights laws for which health information is necessary for determining compliance as stated in section C7.4.
6. **For Judicial And Administrative Proceedings:** A CE may disclose PHI in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the CE discloses only the PHI expressly authorized by such order; or in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal if certain criteria are met as stated C7.5. The minimum necessary requirement should be followed. This requirement requires CE's to take reasonable steps to limit the use or disclosure of, and requests for PHI to the minimum necessary to accomplish the intended purpose.
 7. **For Law Enforcement Purposes:** A CE may disclose PHI for a law enforcement purpose to law enforcement official if the conditions in paragraphs C7.6.1, through C7.6.6, are met, as applicable.
 8. **About Decedents:** A CE may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law as stated in C7.7. A CE that also performs the duties of a coroner or medical examiner may use PHI when any official of the DoD authorizes to perform functions under the authority of the Armed Forces Medical Examiner system under Directive 5154.24, is a medical examiner under paragraph C7.7.1. and/or the CE may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties concerning the decedent.
 9. **For Cadaveric Organ, Eye Or Tissue Donation Purposes:** A CE may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaver organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation as stated in section C7.8.
 10. **About Victims Of Abuse, Neglect, Or Domestic Violence:** Except for reports of child abuse or neglect permitted by subparagraph C7.2.1.2, a public health authority or other Government authority authorized by law to receive reports of child abuse or neglect, a CE may disclose PHI about an individual whom the CE reasonably believes to be a victim of abuse, neglect, or domestic violence to a Government authority, including a social service or protective services agency, authorized by law to receive reports of such as abuse, neglect, or domestic violence, and if the requirements of subparagraphs C7.3.1.1 – C7.3.3, are met.
 11. **For Research Involving Minimal Risk:** A CE may use or disclose PHI for research, regardless of the source of funding of the research, if the requirements of subparagraph C7.9.1.1, C7.9.1.2, or C7.9.1.3, are met.

- 12. To Avert A Serious Threat To Health Or Safety:** PHI may be disclosed when the CE, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, to identify or apprehend an individual who has made a statement admitting participation in a violent crime. PHI may also be disclosed when the CE, in good faith, believes the disclosure is necessary for law enforcement authorities to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody if the requirements of section C7.10, are met.
- 13. For Specialized Government Functions:** If the CE (including a CE not part of or affiliated with the DoD) may use and disclose the PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission if the requirements of section C7.11, are met. The minimum necessary requirement should be followed. This requirement requires CE's to take reasonable steps to limit the use or disclosure of, and requests for PHI to the minimum necessary to accomplish the intended purpose.
- 14. For Workers Compensation:** A CE may disclose PHI as authorized by and to the extent necessary to comply with laws relating workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard or fault if the requirements of C7.12, are met.